

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Miyano Machinery USA Inc.,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. <b>08 C 526</b>
v.	)	
	)	Hon. Virginia Kendall
MiyanoHitec Machinery, Inc.,	)	
Thomas ("Tom") Miyano,	)	Magistrate Judge Nolan
a/k/a Toshiharu Miyano and	)	
Steven Miyano, a/k/a	)	
Shigemori Miyano,	)	
	)	<b>JURY TRIAL DEMANDED</b>
Defendants.	)	

**MOTION TO ENLARGE TIME TO RESPOND  
TO PRELIMINARY INJUNCTION MOTION**

Defendants MiyanoHitec Machinery, Inc., Thomas ("Tom") Miyano, and Steven Miyano ("MIYANOS") respectfully move for additional time to respond to plaintiff Miyano Machinery USA Inc.'s ("MMU" or "Plaintiff") motion for preliminary injunction and state as follows:

1. Plaintiff filed this trade mark infringement action in late January 2008;
2. Following the filing of their complaint, Plaintiff moved for a preliminary injunction;
3. Plaintiff presented its preliminary injunction motion to the Court on February 7, 2008. At that hearing, Plaintiff represented that it would cooperate with discovery related to its preliminary injunction motion. *See* Ex. A at 15:13-16:25;

4. The MIYANOS promptly sought discovery related to Plaintiff's preliminary injunction motion. MITANOS' discovery requests were clearly articulated, narrow and precise to specific meeting minutes and exact individuals of whom depositions were sought. *See* Ex. B email correspondence between E. Manzo and G. Baker;
5. While two individual depositions have taken place and some documents have been produced, Plaintiff has not produced key documents and witnesses;
6. Some of those key documents and witnesses reside in Japan;
7. On February 7, Plaintiff's counsel informed the Court that he would check with his client to determine what Japanese documents and witnesses he would produce;
8. Counsel for the MIYANOS has requested specific documents and witnesses;
9. Counsel for Plaintiff has not produced the documents or witnesses. Counsel for Plaintiff also has not stated a date certain by which those documents and witnesses will be made available. Nor has counsel for Plaintiff agreed to allow the MIYANOS additional time to respond to the preliminary injunction motion;
10. Counsel for the MIYANOS counterclaimed against Miyano Machinery Inc. (a Japanese company) ("MMJ") and its wholly owned subsidiary, MMU;
11. According to the testimony of the former president and chairman of MMU, Henry Marchionne, this Court has personal jurisdiction over MMJ. *See* Ex. C, rough Dep. Tr. of Henry Marchionne at 57:21-58:3, 58:19-60:7;

12. MMJ makes essentially all decisions related to the subject matter of this law suit and particularly the subject matter of the preliminary injunction motion. *See id.* at 43:14-44:5;
13. When MMJ and Tom Miyano parted ways in 2004, MMU did nothing to prevent Mr. Miyano from either competing with them or using his own family surname. *Id.* at 42:12-17;
14. Plaintiff has known of the MIYANOS use of their surname<sup>1</sup> since approximately May 2006. *Id.* at 90:24-91:8;
15. Plaintiff did not send a cease and desist letter to the MIYANOS until nearly a year later on March 30, 2007. *See* Ex. D;
16. Plaintiff then waited another ten months before filing this action and another two weeks before it presented its preliminary injunction motion;
17. In addition to its delay in seeking extraordinary redress from the Court, Plaintiff is not providing the MIYANOS with the discovery necessary to allow the MIYANOS to adequately respond to the preliminary injunction motion;
18. Once, the Plaintiff provides the MIYANOS with the requested discovery, the MIYANOS will be in a position to assess an appropriate date by which they will be able to adequately respond to the preliminary injunction motion;
19. At present, the MIYANOS would like until at least April 18, 2008 to respond to the preliminary injunction motion. Plaintiff has already flatly refused this extension. *See* Ex. B, email correspondence between E. Manzo to G. Baker;

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<sup>1</sup> Plaintiff acknowledges that Miyano “is a family surname.” *See* Hrg. Tr. at 5:6-7.

20. The MIYANOS would also welcome the Court's assistance to encourage Plaintiff to promptly and completely provide the MIYANOS with the requested discovery.

DATED: March 10, 2008

Respectfully submitted,

/s/ Geoffrey A. Baker

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing MOTION TO ENLARGE TIME TO  
RESPOND TO PRELIMINARY INJUNCTION MOTION was filed via the Court's ECF  
system and thus also sent by email on March 10, 2008 to the following:

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March 10, 2008

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